

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
AUGUST 10, 2005

ITEM: 12

SUBJECT: Cleanup of Marine Sediments in San Diego Bay adjacent to Shipyard Leaseholds: Discussion concerning Tentative Cleanup and Abatement Order No. R9-2005-0126 and follow up to Public Workshop conducted on June 29, 2005. To assure that the Regional Board proceedings in this matter are fair and impartial, it is necessary to separate the functions of staff members presenting evidence from staff members advising the Regional Board. Arthur Coe will direct staff presenting evidence and recommendations to the Regional Board, and John Robertus will direct staff advising the Regional Board on these matters.

Separate summaries of Item Nos. 12a, 12b, and 12c follow.

EXECUTIVE OFFICER SUMMARY REPORT
AUGUST 10, 2005

ITEM: 12 a

SUBJECT: Status Report on the Development of appropriate Marine Sediment Quality Objectives by the State Water Resources Control Board and the Southern California Coastal Water Research Project. No action will be taken by the Regional Board. (*John Robertus*)

PURPOSE: The purpose of this item is to provide information on the status of work being done by the State Water Resources Control Board and the Southern California Coastal Research Project in developing sediment quality objectives.

PUBLIC NOTICE: There are no requirements for a public notice of this item.

DISCUSSION: Representatives from the State Water Resources Control Board (State Board) and the Southern California Coastal Water Research Project (SCCWRP) will be providing the Regional Board a status of the work being conducted to develop sediment quality objectives for enclosed bays and estuaries.

By February 2007 the State Board is required to develop and adopt sediment quality objectives in accordance with the California Water Code. Since 1999, the State Board has been working through a process to develop objectives with assistance from the SCCWRP.

The State Board's website provides additional information about the sediment quality objective process:
www.swrcb.ca.gov/bptc/sediment.html

Enclosed for today's status report to the Regional Board is a copy of a written status report from the State Board dated July 6, 2005.

KEY ISSUES: None

LEGAL CONCERNS: None

SUPPORTING DOCUMENTS: None

RECOMMENDATION(S): None

STATE WATER RESOURCES CONTROL BOARD
WORKSHOP SESSION--DIVISION OF WATER QUALITY
JULY 6, 2005

ITEM 8

SUBJECT

INFORMATION ITEM--ANNUAL STATUS REPORT ON THE STATE WATER RESOURCES CONTROL BOARD (STATE WATER BOARD) PROGRAM TO DEVELOP SEDIMENT QUALITY OBJECTIVES

DISCUSSION

The State Water Board is required to conduct annual public workshops to report on the status of the program to develop sediment quality objectives (SQOs) and to provide a description of planned future activities. This public workshop is intended to fulfill that requirement for the period of July 2004 to July 2005. The first Annual Status Report Workshop was held July 7, 2004. Prior to that, the State Water Board held a public workshop and hearing on May 6, 2003 concerning the Workplan to develop SQOs, which was later adopted at the May 21, 2003 Board Meeting under Resolution No. 2003-0034.

In 1989, the California Water Code (CWC) was amended to require the State Water Board to develop SQOs as part of a comprehensive program to protect existing and future beneficial water uses within California's enclosed bays and estuaries. The State Water Board prepared a conceptual approach in 1991 to develop SQOs; however, this conceptual approach was never implemented because available resources were focussed at that time on the identification of hot spots throughout coastal waters, bays, and estuaries and development of cleanup plans. In 1999, a lawsuit was filed against the State Water Board for failing, among other things, to adopt SQOs in accordance with the CWC. The Court agreed with the petitioners, and the State Water Board was mandated to develop SQOs. As required by Court Order, SQOs are to be developed under the following schedule:

- By June 30, 2003, the State Water Board must adopt a scoping document and/or any necessary revisions to the 1991 Workplan.
- By August 5, 2005, the State Water Board must circulate draft proposed objectives to the public.
- By February 28, 2007, the State Water Board must adopt proposed objectives and implementation policy and submit to the Office of Administrative Law.
- Hold public workshops annually to report on the status of the program and future efforts.

State Water Board staff has been working with the Southern California Coastal Water Research Project, the San Francisco Estuary Institute, Moss Landing Marine Laboratories, Marine Pollution Studies Laboratory at Granite Canyon, and scientists from other organizations and agencies to develop the most robust, sensitive and relevant tools, thresholds, and methods possible.

Presented below is a description of tasks and activities conducted during the past year.

Outreach and Coordination Efforts

Scientific Steering Committee (SSC): Members of the SSC are: Ed Long, consultant formerly with National Oceanic and Atmospheric Administration (NOAA); Dr. Peter Landrum; NOAA Great Lakes Research Laboratory; Dr. Todd Bridges; U.S. Army Corps of Engineers, Engineer Research and Development Center; Tom Gries, Washington Department of Ecology Sediment Management Unit; Dr. Robert F. Van Dolah; South Carolina Marine Resources Research Institute; and Dr. Robert Burgess, U.S. Environmental Protection Agency (U.S. EPA's) Office of Research and Development.

The SSC met in August 2004 to review the overall approach proposed by the technical team and again in April 2005 to review specific technical elements associated with target organisms, sediment indicators, and the integration of multiple lines of evidence. Overall the SSC has responded favorably to both the overall approach and the specific technical elements. The greatest concern of the SSC is the limited time available to complete the research and assess all the implementation related issues that arise during this developmental process. The SSC will meet again on July 27, 28, and 29, 2005 to receive preliminary results of ongoing efforts and to assess whether the tools proposed for further evaluation refinement are well supported by the results. The selected indicators will form the basis for threshold development. Preliminary thresholds will be presented at the SSC meeting slated for October 2005.

Sediment Quality Advisory Committee: The Sediment Quality Advisory Committee consists of eleven primary members representing a variety of interests from industry to environmental justice and conservation organizations. The main goal of this committee is to advise State Water Board staff on policy issues and objectives development. Since January 2005 the Sediment Quality Advisory Committee has been meeting every six to eight weeks.

Agency Coordination Committee: This committee was initiated primarily to ensure that the proposed implementation policy does not conflict with other established water quality and resource protection programs. Agencies with staff participating include U.S. EPA, U.S. Fish and Wildlife Service, NOAA, coastal Regional Water Quality Control Boards, Department of Fish and Game, California Coastal Commission, Office of Environmental Health Hazard Assessment, Department of Toxic Substances Control, State Lands Commission, Bay Conservation and Development Commission, and the Department of Pesticide Regulation.

Policy Tasks

The Sediment Quality Advisory Committee and the Agency Coordination Committee members have identified a number of priority concerns that the State Water Board staff is researching for the participants. These issues include:

- Linking biological effects to pollutants
- Environmental justice, selection of risk factors, and consumption rates
- Use of SQOs in regulatory and assessment programs

Technical Accomplishments

- Completion of the sediment quality database. Comparison of the proposed indicators and thresholds to sediment quality assessment data from California will be used to demonstrate that the policy is protective and consistent throughout the state.

- Comparison of current sediment quality guideline approaches. Statistical analyses are being used to select the methods that provide the best reliability and accuracy for determining the impacts from sediment contamination.
- Identification of benthic community habitat groups and candidate indices of condition. The effective use of benthic community analysis information requires the development of interpretive tools that are minimally affected by natural variations in populations due to habitat differences.
- Comparison of sublethal sediment toxicity test reliability. Evaluation of toxicity test sensitivity and reliability is needed to ensure that the proposed methods are protective of beneficial uses and able to provide consistent results.
- Evaluation of sediment-biota accumulation processes. Quantification of the linkage between sediment contamination and accumulation in fish is essential for the selection of sediment chemistry thresholds that are protective of human health and wildlife.

Planning Tasks

- Completion of final technical work plans for project elements. The technical work plans have been reviewed and endorsed by the Scientific Steering Committee, which provides assurance that sound science is being used.
- Development of a multiple line of evidence assessment framework. The framework provides a mechanism to improve accuracy of the assessment and also provides information that can be used to prioritize impacted sites for subsequent management action.
- Identification of data needs for application of SQOs in regulatory programs. Frequent communication with stakeholder groups has identified areas of concern and resulted in suggestions to improve the implementation of the objectives.
- Develop indicator specific thresholds for review by SSC, Sediment Quality Advisory Committee, and Agency Coordination Committee by October 2005.

Schedule

- July 26-28th 2005, SSC Meeting at Southern California Coastal Water Research Project (SCCWRP)
- August 5, 2005, Circulate a Staff Policy Summary
- September 30, 2005, California Environmental Quality Act Scoping Meeting
- October 30, 2005, SSC Meeting at SCCWRP
- December 30, 2005, Circulate Draft Functional Equivalent Document

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
August 10, 2005

ITEM: 12b

SUBJECT: Status Report on Documents and Activities related to the Cleanup of Sediments in San Diego Bay and in support of Tentative Order No. R9-2005-0126. (*Art Coe*)

PURPOSE: The purpose of this item is to provide information to the Regional Board on the status of the documents and activities associated with the cleanup of Shipyard Sediment Site. The Board has no action to take on this item

PUBLIC NOTICE: There are no requirements for public notice for this item.

DISCUSSION: In 2001, pursuant to Resolutions No. 2001-02 and 2001-03, the Regional Board directed National Steel and Shipbuilding Company (NASSCO) and Southwest Marine Inc.(Shipyards) to undertake a detailed investigation to remediate contaminated marine sediments offshore of the Shipyards in San Diego Bay. Regional Board staff subsequently formed an advisory group comprised of technical scientific experts and other interested parties representing both the shipyards and a diverse collection of other stakeholders (including the San Diego Bay Council, Audubon Society, Environmental Health Coalition, Surfrider Foundation, CA Fish and Wildlife, US Fish and Game, and the US Navy) to guide the study and provide input on the scope of work and other aspects of the investigation. Between 2001 and 2003, the Regional Board held a series of eight day-long stakeholder meetings and public workshops to obtain the advisory group's input into the difficult task of establishing cleanup levels for a complex marine environment. In October 2003 results of the investigation were submitted in a report prepared by Exponent, the Shipyard's consultants, entitled "NASSCO and Southwest Marine Detailed Sediment Investigation" (Shipyard Report) dated September 2003.

In February 2004, the Regional Board issued Water Code Section 13267 Investigative Orders to several entities in the vicinity of the Shipyard Sediment Site to determine if other dischargers, in addition to the Shipyards, could be associated with the sediment contamination and required to participate in cleanup and abatement measures.

Regional Board staff has completed review and an extensive technical evaluation of the data and interpretations in the Shipyard Report and the other reports submitted in response to the Investigative Orders. During this analysis, the staff consulted with and considered comments provided by technical experts and other interested parties representing both the shipyards and the 'San Diego Bay Council (Environmental Health Coalition, San Diego Baykeeper, and Sierra Club - San Diego Chapter, San Diego Audubon Society, and Surfrider Foundation - San Diego Chapter).

The Regional Board's consultations with technical experts included persons from the following organizations: California Department of Fish and Game; California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA); U.S. Fish and Wildlife Agency; National Oceanic and Atmospheric Administration (NOAA) Coastal Protection and Restoration Division; NOAA National Marine Fisheries Service; Southern California Coastal Research Project (SCCWRP); University of California Marine Pollution Studies Laboratory; California State University Moss Landing Marine Laboratories; and U.S. Navy Space and Naval Warfare Systems Center (SPAWAR) Environmental Sciences and Technology Branch. The Regional Board has also regularly attended meetings and monitored the activities involved with the State Water Resources Control Board's project to develop marine sediment quality objectives for enclosed bays and estuaries.

Based on the data provided in the Shipyard Report and other reports, and the input cited above, Regional Board staff developed and issued for public review, on April 29, 2005, Tentative Cleanup and Abatement Order (CAO) No. R9-2005-0126. The Tentative CAO establishes proposed cleanup requirements and proposed responsible parties for the Shipyard Sediment Site. The Tentative CAO will be considered for adoption by the Regional Board at the conclusion of a process that will include one or more public hearings. The start of this process is pending.

On June 29, 2005 the Regional Board directed staff to prepare and release a technical report in support of the Tentative CAO. Also on June 29, 2005 the Regional Board staff held a public workshop presenting details regarding this document and the underlying analysis. The workshop also provided opportunities for presentations by others, and for questions and answers.

By mid-November 2005, Regional Board staff will issue for public review and comment a Draft Technical Report providing the rationale and factual information supporting the proposed findings and directives of the Tentative CAO. There are no plans

to issue a revised CAO prior to receipt of comments on the Tentative CAO and Draft Technical Report, which will occur during the Tentative CAO adoption process.

KEY ISSUES: None. Informational item.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS: None.

RECOMMENDATION: None.

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
AUGUST 10, 2005

ITEM: 12 c

SUBJECT: Discussion of a Process to establish Marine Sediment Quality Objectives, to establish cleanup levels, and to issue a Cleanup and Abatement Order. The Regional Board will consider whether to amend its Water Quality Control Plan (Basin Plan) to adopt Sediment Quality Objectives prior to issuance of a Cleanup and Abatement Order with final cleanup levels. That Process shall include having the Chair conduct one or more pre-hearing conferences to set procedures for the Cleanup and Abate Order proceeding(s). Action may be taken by the Regional Board.
(John Robertus)

PURPOSE: The purpose of this item is to provide an opportunity for the Regional Board to discuss and consider a basin plan amendment process for the adoption of sediment quality objectives before the issuance of a Cleanup and Abatement Order.

PUBLIC NOTICE: This item was noticed on July 22, 2005 in the Agenda Notice for today's meeting. Today's meeting Agenda Notice was also posted on the Regional Board's website. On July 8, 2005 all interested parties and persons received an e-mail message from the Executive Officer on the Regional Board's intent to schedule this item for today's meeting.

DISCUSSION: Following the Regional Board Meeting of June 29, 2005, the Executive Officer on June 30, 2005 notified the Regional Board staff by letter of the need to separate the functions of the Regional Board for the Cleanup and Abatement of marine sediments in San Diego Bay. Enclosed is a copy of the letter.

Then on July 8, 2005 the Regional Board Executive Officer sent an email message to the Arthur Coe of the Regional Board and all interested parties and persons on the intent to schedule three items on today's meeting agenda regarding the cleanup of sediments and a process to establish sediment quality objectives as part of a basin plan amendment process. Enclosed is copy of the email message. The three items referenced in the email message have been scheduled for today's meeting.

For the Regional Board's consideration of a basin plan amendment process as part of an action to require cleanup of sediment, enclosed is a report from the Regional Advisory Team on the basin plan amendment process.

KEY ISSUES:

Is a basin plan amend process a helpful and appropriate first step in developing final cleanup levels for marine sediments in San Diego Bay?

LEGAL CONCERNS:

None

**SUPPORTING
DOCUMENTS:**

1. Letter dated June 30, 2005 from the Regional Board Executive Officer on the Separation of Functions for Proceedings on Cleanup and Abatement Order of Marine Sediments in San Diego Bay.
2. Email Message dated July 8, 2005 Regional Board Executive Officer to Arthur Coe and the Shipyards Process Distribution List requesting the technical information supporting the tentative Cleanup and Abatement Order and the scheduling of the three items for today's meeting.
3. Report dated July 29, 2005 titled, "Consideration of a Basin Plan Amendment Process to Develop Marine Sediment Quality Objectives as a Basis for Cleanup Levels intended to restore the Marine Ecosystem".

RECOMMENDATION(S): The Executive Officer may have recommendations at the conclusion of the discussion on this item.



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

Supporting Document 1

TO: David Barker
Mike McCann
Art Coe

In reply refer to:
TMDL:03-0066.05:JRobertus
TMDL:03-0137.05:JRobertus

FROM: John Robertus
Executive Officer
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: June 30, 2005

SUBJECT: SEPARATION OF FUNCTIONS FOR PROCEEDINGS ON CLEANUP AND ABATEMENT OF MARINE SEDIMENT IN SAN DIEGO BAY WITHIN AND ADJACENT TO SOUTHWEST MARINE, INC. AND NATIONAL STEEL AND SHIPBUILDING COMPANY LEASEHOLDS GENERALLY BETWEEN SAMPSON STREET EXTENSION AND MOUTH OF CHOLLAS CREEK.

The Regional Board is preparing to consider requiring cleanup and abatement for discharges of pollutant wastes to marine sediment and waters of San Diego Bay at the subject site. The purpose of this memorandum is to confirm membership of two teams working on this issue and to establish procedures to assure the Regional Board's proceedings in this matter are fair and impartial. The teams and procedures will remain in place until after the Regional Board issues a final Order in this matter.

The Regional Board proceedings in this matter are subject to regulations in Title 23, California Code of Regulations (CCR) Division 3, Chapter 1.5, sections 648, et seq., chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. The Regional Board as well as National Steel and Shipbuilding Company (NASSCO); Southwest Marine, Inc.; City of San Diego; Marine Construction and Design Company and Campbell Industries, Inc.; Chevron, A Subsidiary of Chevron Texaco; BP; San Diego Gas and Electric, a Subsidiary of Sempra Energy Company; and the United States Navy are currently designated parties to the proceedings. Other interested persons will likely seek status as designated parties and the current list of parties will be expanded to include any other person whom the Regional Board determines should be designated as a party to the proceedings.

Because the Regional Board proceedings involve an intensely controversial enforcement action, it is necessary at this time to separate the functions of staff members presenting evidence for consideration by the Regional Board from those of staff members providing advice to the presiding hearing officer (in this case the Regional Board Chair) and other Regional Board members. Assigning responsibility for advising the Regional Board Members to staff other than those who will present testimony to the Regional Board Members will help assure the fairness and impartiality of the Regional Board's proceedings. Accordingly, the Regional Board staff participating in the proceedings will be separated into two groups.

One group, the Shipyard Sediment Site Cleanup Team (Cleanup Team), will serve in a "prosecutorial" function in the proceedings and assume responsibility for presenting evidence to the Regional Board on the issues that will be described in a public hearing notice. The other team, the Shipyard Sediment Site Advisory Team (Advisory Team), will assist the Regional Board Chair in matters such as evaluating requests for designated party status, enforcing deadlines and other limitations on written and electronic submissions and exhibits, and preparing for and conducting the proceedings. The Advisory Team will also provide advice to the Regional Board Chair and other Regional Board members in their deliberations on the evidence presented in the proceedings.

Consistent with this separation of functions, members of the Cleanup Team will be treated like any other party before the Regional Board throughout the proceedings, and should not have any contact with Regional Board members or members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* contacts that apply to all other parties. For purposes of this memorandum, an "*ex parte* contact" is any written or verbal communication, pertaining to the Shipyard Sediment Site cleanup project, between a member of the Cleanup Team and a Regional Board Member or a staff member of the Advisory Team, unless the communication is copied to all other parties to the proceedings (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not "*ex parte* contacts" and are not restricted.

I am designating the following staff members as the Cleanup Team:

Craig Carlisle, Senior Engineering Geologist
Tom Alo, Water Resource Control Engineer
Alan Monji, Environmental Scientist
Peter Peuron, Environmental Scientist
Ben Tobler, Water Resource Control Engineer

David Barker, Supervising Water Resource Control Engineer, will supervise the Cleanup Team. Art Coe, Assistant Executive Officer, will in turn supervise David Barker in this matter. For this matter only, I will not be supervising Art Coe, David Barker, or the Cleanup Team. The State

Water Resources Control Board, Office of Chief Counsel is assigning John Richards, Senior Staff Counsel to provide legal support to the Cleanup Team.

I, as Executive Officer, and Mike McCann, Supervising Water Resource Control Engineer, will serve as members of the Advisory Team. The Office of Chief Counsel is assigning Phil Wyels, Assistant Chief Counsel to provide legal support to the Advisory Team. Phil Wyels will not be supervising John Richards for this matter.

It is anticipated that as the Cleanup Team prepares its testimony, and as the Advisory Team reviews the written submittals from parties and interested persons, either or both teams may conclude that additional staff are needed. Should that occur, they should contact me, or Mr. Craig Wilson, Chief Counsel, as appropriate, to request assignment of additional staff as necessary. Staff assigned to the Advisory Team should not include any individuals who have served as members of the Cleanup Team or who actively participate in formulating the terms and conditions of a tentative cleanup and abatement order or a supporting Technical Report in this matter.

Any staff assigned to or who assists either team, during the proceedings or evaluating the hearing record, should be specifically assigned to that team. This includes any managers or supervisors who, by actively directing or assisting either team on matters such as deciding what theories to argue, go beyond routine procedural matters or assignment of staff. Once assigned to either team, an individual shall not participate in matters concerning the Shipyard Sediment Site cleanup project that are assigned to the other team. For example, a staff member assigned to the Cleanup Team cannot participate in closed meetings with any Regional Board Member or Advisory Team Member to discuss issues associated with the Shipyard Sediment Site cleanup.

Please make sure any staff that may be assigned to either team or may be involved in discussions of the proceedings on the Shipyard Sediment Site cleanup issue are aware of and follow these procedures.

cc: John Minan, Regional Board Chair
Craig Wilson, Chief Counsel, State Water Resources Control Board
John Richards, Senior Staff Counsel, State Water Resources Control Board
Phillip Wyels, Assistant Chief Counsel
Craig Carlisle, Senior Engineering Geologist, Regional Board

From: John Robertus
To: Art Coe
Date: 7/8/05 6:09PM
Subject: Information request: Shipyard Sediment Site Cleanup

Art Coe,

In accordance with the provisions established in the attached instruction, I request that the Shipyard Sediment Site Cleanup Team (Cleanup Team) provides the Regional Board with the following information to facilitate scheduling of public hearings by the Board concerning the cleanup of marine sediments in San Diego Bay.

1. The date for public release of the Staff Technical Report that supplements Tentative Order R9-2005-0126.
2. The date for public release of any currently contemplated updated version of Tentative Order R9-2005-0126.

The Regional Board intends to provide at least 45 days for public review of these documents pertaining to the cleanup of sediments in San Diego Bay prior to convening a public hearing for the sediment cleanup.

In preparation for the Regional Board to conduct public hearings on the cleanup of sediments in San Diego Bay, the Board tentatively intends to conduct three agenda items at the 10 August Board Meeting. These agenda items are expected to provide the Board Members, Regional Board Cleanup Team and members of the public the opportunity to consider various characteristics of marine sediment quality and possible actions by the Board to clean up marine sediments that have been determined to be below sediment quality objectives.

One agenda item will be focused on the State Water Resources Control Board project to contract with the Southern California Coastal Waters Research Project (SCCWRP) to investigate a process that can determine appropriate marine sediment quality objectives. No action will be taken by the Board.

A second agenda item will request that the Regional Board Cleanup Team report to the Board on the status of the documents and activities related to the cleanup of marine sediments in San Diego Bay. No action will be taken by the Board

A third agenda item will allow the Regional Board to discuss and select the procedures for this Cleanup and Abatement Order proceeding, including the process to adopt and implement an appropriate cleanup level for marine sediments in an industrial and shipyard area of San Diego Bay. One option that the Regional Board intends to consider is whether to amend its Water Quality Control Plan to adopt site-specific Sediment Quality Objectives prior to issuing a final Cleanup and Abatement Order that contains final cleanup levels. The Cleanup Team and other parties should be prepared to discuss this option of the Regional Board requiring interim investigation and remediation actions pending any amendment of the Water Quality Control Plan. For this third agenda item, action may be taken by the Board.

This letter is to be included in the record of the Regional Board marine sediment cleanup project.

Respectfully,

John Robertus, Executive Officer, SDRWQCB

"For information about the California Regional Water Quality Control Board, San Diego Region, see our Web-site at <http://www.waterboards.ca.gov/sandiego/>."

CC: Shipyards Process Distribution

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

CONSIDERATION OF A BASIN PLAN AMENDMENT PROCESS TO
DEVELOP MARINE SEDIMENT QUALITY OBJECTIVES AS A BASIS
FOR CLEANUP LEVELS INTENDED TO RESTORE THE MARINE
ECOSYSTEM

July 29, 2005

To: John H. Minan
Chairman, San Diego Regional Board

From: Regional Board Advisory Team

A basin plan amendment that establishes sediment quality objectives would be a helpful, although not necessary, first step in developing the final cleanup levels for marine sediments in San Diego Bay. The basin plan amendment process would result in the development and adoption of sediment quality objectives that would be used to set the upper (least stringent) bounds in determining the final cleanup levels. If there were no sediment quality objectives, the upper bounds for setting the cleanup levels would be the less quantitative requirements to abate pollution and nuisance conditions, to comply with other applicable water quality objectives, and to protect existing and designated beneficial uses. In either case, the lower (most stringent) bounds for the cleanup levels will be background levels of sediment quality, as required by State Board Resolution No. 92-49, section III.G¹.

The basin plan amendment process is a quasi-legislative process that would establish marine sediment quality objectives for inclusion in the Regional Board's basin plan. In accordance with Water Code section 13393(b), those sediment quality objectives would be "based on scientific information, including but not limited to, chemical monitoring, bioassays or established modeling procedures, and shall provide adequate protection for the most sensitive aquatic organisms." The objectives shall also be based "on a health risk assessment if there is a potential for exposure of humans to pollutants through the food chain to edible fish, shellfish, or wildlife." The sediment quality objectives could be for some or all of the pollutants, and the geographic application of the objectives would be determined by the Regional Board.

The State Water Board is currently in the process of developing narrative marine sediment quality objectives. Those narrative sediment quality objectives will likely include a model and process that requires the use of site-specific data for the Regional Boards to develop site-specific sediment quality objectives.

Once the basin plan amendment process has concluded, the sediment quality objectives would be the upper bounds for the final cleanup levels in accordance with Resolution No. 92-49.

The basin plan amendment process is a fundamental function of the Regional Board that requires the review and approval of the State Water Resources Control Board, the State Office of Administrative Law, and the U.S. Environmental Protection Agency.

The Regional Board should consider utilizing the basin plan amendment process for the following reasons:

1. The adoption by the Regional Board of sediment quality objectives would be a strong basis for the subsequent establishment of scientifically based, enforceable final cleanup levels.
2. The amendment process should help to ensure that the cleanup levels are not later determined to be inconsistent with the State Water Board's sediment quality objectives.
3. The amendment process, as a quasi-legislative process, will allow for a more objective consideration of the science, include procedures that are less restrictive to the public, promote a more open sharing of information, and result in a more deferential standard of review if the sediment quality objectives themselves are challenged.
4. The amendment process hearings would not be as formal as the cleanup and abatement order hearings.
5. The amendment process will not preclude the possible participation of the US Army Corps of Engineers (USCOE) to participate in restoration of San Diego involving sediment, whereas enforcement action such as a cleanup and abatement order would preclude any funding or participation by the USCOE.
6. The amendment process would not require the separation of functions by the Regional Board as is required in a formal hearing to adopt cleanup levels in an enforcement order.
7. At any point during the amendment process, the Regional Board would still have the option of issuing investigative and /or interim cleanup orders directing actions of the responsible parties to take necessary actions preparatory to the final cleanup of sediment. These actions could include, for example, the collection of any necessary additional data to develop the sediment quality objectives or to further

define the scope of the pollution, and interim cleanup actions to address high risk sediment areas or sources.

8. While the amendment process does take considerable time, a major benefit of the process is that the objectives established will receive review and approval at the state and federal level.
9. While the amendment process may appear to add more time to the overall process toward completing the cleanup of sediments, the cleanup and abatement order enforcement approach with the anticipated litigation may take as long or longer than the amendment approach. Additional time may be considered an advantage to allow further reduction of pollutant discharges that contribute to sediment contamination, or as a disadvantage because of the prolonged presence of sediment pollutants continuing to impair the marine system.

ⁱ State Board Resolution No. 92-49, Section III.G, reads as follows:

III. The Regional Water Board shall implement the following procedures to ensure that dischargers shall have the opportunity to select cost-effective methods for detecting discharges or threatened discharges and methods for cleaning up or abating the effects thereof. The Regional Water Board shall:

G. Ensure that dischargers are required to clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible; in approving any alternative cleanup levels less stringent than background, apply Section 2550.4 of Chapter 15, or, for cleanup and abatement associated with underground storage tanks, apply Section 2725 of Chapter 16, provided that the Regional Water Board considers the conditions set forth in Section 2550.4 of Chapter 15 in setting alternative cleanup levels pursuant to Section 2725 of Chapter 16; any such alternative cleanup level shall:

1. Be consistent with maximum benefit to the people of the state;
2. Not unreasonably affect present and anticipated beneficial use of such water; and
3. Not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards.....